

OLC REPROD COPY

18 September 1978
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SEC

MEMORANDUM FOR: Deputy Legislative Counsel

FROM:

Assistant Legislative Counsel

SUBJECT: Rules of Procedure of the Senate Select Committee
on Ethics

1. With regard to the inquiry made to you by Don Sanders, Special Counsel, Morgan-Schmitt Senate Select Committee on Ethics Subcommittee, note that the Rules of Procedure of the Senate Select Committee on Ethics provide the following with regard to adjudicatory hearings:

- that the Committee may determine in accordance with paragraph 7 (b) of Rule XXV of the standing rules of the Senate whether to receive testimony in executive session.
- that, at the discretion of the Committee, an "appropriate agreement" limiting access and disclosure of information and documents provided to the respondent may be required.
- that if a respondent "or other individual" violates an agreement limiting access and disclosure the Committee, by majority vote, may recommend to the Senate that the offender be cited for contempt of Congress.

The Rules of Procedure also provide safeguards for handling of transcripts of executive session hearings.

2. The Rules of Procedure thus provide three out of the four major safeguards we would desire, i.e., executive session, nondisclosure agreement, and the sanction of contempt of Congress. What is missing is any arrangement for a security check on outside counsel, expert witnesses, or others outside the Committee, its' staff, or the respondent who might become party to the procedures.

3. I think that in the case of the Morgan-Schmitt Subcommittee, our desire to carry forward the DCI's responsibility for the protection of intelligence sources and methods has to be balanced against the importance of keeping the DCI in a cooperative posture vis-a-vis the

Subcommittee clearly charged with pursuing investigations of unauthorized disclosures. We have an interest in seeing to it that the Morgan-Schmitt Subcommittee becomes an effective deterrent. I think we can handle the problems posed by Don without a formal amendment to the Memorandum of Understanding between the DCI and the Subcommittee. I would suggest an exchange of letters wherein Sanders specifies that the procedures outlined above will be employed in the forthcoming hearing and we ask for the addition of a National Agency Check on counsel or other outside parties likely to be exposed to classified material.

4. I am not certain that either OGC or the Office of Security will concur with this kind of arrangement. I do think it will be necessary to have their agreement before proceeding.



STA

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